

STATE OF NORTH DAKOTA
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT
SYSTEM (NDPERS)

400 East Broadway, Suite 505
Bismarck, ND 58502

Request For Proposal (RFP)

RFP SECTION I – Procurement Document

RFP Title: Group Voluntary Dental Coverage and Group Voluntary Long Term Care Insurance

Date of Issue: May 22, 2006

Proposal Due Date: July 6, 2006

Proposed Effective Date: January 1, 2007

Purpose of the RFP:

North Dakota Public Employees Retirement System (NDPERS) is soliciting proposals for the following:

- a) Group Voluntary Dental Coverage – on a self-funded basis
 - Quote to include aggregate stop loss
- b) Group Voluntary Dental Insurance – on a fully insured basis
 - Proposals are being requested on both an experience rated and pooled basis
- c) Group Voluntary Long Term Care Insurance
 - Do NOT provide a quote for individual Long Term Care Insurance.

Background Information:

For background information related to the client and this RFP, refer to Section Two of this document.

Offerors are not required to return this form.

Procurement Officer's Designee:

William F. Robinson, Jr.
Area Vice President
Gallagher Benefit Services, Inc.
6399 South Fiddler's Green Circle, Suite 200
Greenwood Village, CO 80111
bill_robinson@ajg.com

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SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01

Purpose of the RFP

North Dakota Public Employees Retirement System (NDPERS), hereafter known as “purchasing agency,” is soliciting proposals for the following:

- a) Group Voluntary Dental Coverage – on a self-funded basis
 - Quote to include aggregate stop loss
- b) Group Voluntary Dental Insurance – on a fully insured basis
 - Proposals are being requested on both an experience rated and pooled basis
- a) Group Voluntary Long Term Care Insurance
 - Do NOT provide a quote for individual Long Term Care Insurance.

1.02

Plan year

Calendar year (January 1 through December 31)

1.03

Proposed effective date

January 1, 2007

1.04

Proposal due date

Proposals are due no later than 5:00 PM Mountain Daylight Saving Time (MDT) on Thursday, July 6, 2006.

1.05

Contact Person, Address, E-mail

Procurement Officer's Designee -

William F. Robinson, Jr.
Area Vice President
Gallagher Benefit Services, Inc.
6399 South Fiddler's Green Circle, Suite 200
Greenwood Village, CO 80111
bill_robinson@ajg.com

The procurement officer's designee is the point of contact for this RFP. All vendor communications regarding this RFP should be directed to the procurement officer's designee.

1.06

RFP Schedule of Events

The approximate RFP schedule is as follows:

RFP released	Monday, May 22, 2006
Vendors' written questions due to GBS	5 :00 PM (MDT) on Monday, June 19, 2006
Q & A released to vendors	Friday, June 23, 2006
Proposals due, as specified in this RFP	5 :00 PM (MDT) on Thursday, July 6, 2006
Finalist interviews, if needed	Late August 2006
NDPERS to award contracts	September 2006
Open enrollment	Beginning mid-October 2006
Contract start date	January 1, 2007

This schedule of events represents NDPERS' best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted by the same number of days.

1.07

Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. Direct all questions and objections to the Procurement Officer's designee, Gallagher Benefit Services, Inc. to determine whether any amendments are necessary and to ensure all vendors receive the same information at the same time.

Questions must be submitted no later than the deadline noted in the RFP Schedule of Events.

All questions must be in writing and directed to the procurement officer's designee (William F. Robinson, Gallagher Benefit Services) as noted below:

William F. Robinson, Jr.
Area Vice President
Gallagher Benefit Services, Inc.
bill_robinson@ajg.com

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made.

Oral communications are considered unofficial and non-binding on the State.

Responses to vendor questions will be sent, via e-mail, to all vendors no later than the deadline noted in the RFP Schedule of Events.

1.08

Number and Format of Proposals

- a) All complete proposals must be in sealed envelopes and clearly marked "BID – GROUP VOLUNTARY DENTAL COVERAGE AND/OR GROUP VOLUNTARY LONG TERM INSURANCE." The cost proposal(s) should be in a separate sealed envelope within this package and marked "COST PROPOSAL."
- a) Proposals must be received no later than the deadline noted in the RFP Schedule of Events.
- b) Deliver or send one (1) copy and an electronic version (preferably CD-ROM, or via e-mail: Word/Excel) of your proposal to –

Mr. Sparb Collins
Executive Director
North Dakota PERS
400 East Broadway, Suite 505
Bismarck, ND 58502
scollins@nd.gov

- c) Deliver or send two (2) copies and an electronic version (preferably CD-ROM, or via e-mail: Word/Excel) of your proposal to –

William F. Robinson, Jr.
Area Vice President
Gallagher Benefit Services, Inc.
6399 South Fiddler's Green Circle, Suite 200
Greenwood Village, CO 80111
bill_robinson@ajg.com

Proposals must be received at the contacts / locations as specified above. Proposals will not be publicly read at the opening.

Offerors assume the risk of the method of dispatch chosen. State assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt. An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

1.09

Pre-proposal Conference

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer's designee by the deadline indicated for submission of questions in the schedule of events.

1.10

Amendments to the RFP

If an amendment to this RFP is issued, it will be provided to all offerors that were emailed a Notice of RFP and to those that have formally indicated an interest in bidding on the coverage(s).

1.11

News Releases

News releases related to this RFP will not be made without prior approval of NDPERS.

1.12

Notice of RFP Provided

The Request for Proposal and any amendments to the RFP will be posted on the following website:

<http://www.nd.gov/ndpers>

Go to the left side of page → See "Consultant/Provider Services" → Click on "Request for Proposals"

Interested vendors should check the website daily for any updates.

1.13

Letter of Interest

Vendors interested in receiving the census information and any notices related to this RFP should contact the procurement officer's designee (Gallagher Benefit Services), as noted in RFP Section II – Article III, with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the procurement officer's designee with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

SECTION TWO BACKGROUND INFORMATION

2.01

Background Information

a) Client's name and address

North Dakota Public Employees Retirement System
400 East Broadway, Suite 505
Bismarck, ND 58502

b) Type of industry

The North Dakota Public Employees Retirement System (NDPERS) is a separate agency created under North Dakota state statute, and while subject to state budgetary controls and procedures (as are all state agencies), is not a state agency subject to direct executive control.

NDPERS is managed by a Board, comprised of seven members:

- Chairman appointed by the Governor
- Member appointed by the Attorney General
- Member elected by retirees
- Members (3) elected by active employees
- State Health Officer

The North Dakota Public Employees Retirement System (NDPERS) is responsible for the administration of the State of North Dakota's retirement, health, life, dental, vision, deferred compensation, flex comp, retiree health insurance credit programs, long term care and EAP programs. Political subdivisions of the state do not participate in the voluntary dental and long term care plans; however, retirees of political subdivisions are allowed to participate as NDPERS pensioners.

c) Number of eligible employees / retirees

- Approximately 12,200 active employees are eligible to participate in the plans.
- Approximately 1,000 new retirees are eligible for coverage per year, in addition to those already participating.

d) Reason for soliciting proposals

- The incumbent dental insurer is exiting the market at the end of 2006.
- NDPERS has elected to periodically review Long Term Care market opportunities.

e) Dental Plan: Eligibility and Effective Date

Dental Plan Eligibility

Eligible Employee	Permanent employees who are employed by a governmental unit, as that term is defined in Section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of the state or political subdivision boards, commissions or associations, elective state officers, as defined by Subsection 2 of Section 54-06-01, and permanent disabled employees who are receiving compensation from the North Dakota Workforce Safety and Insurance fund. As used in this Subsection, "permanent employee" means one whose services are not limited in duration, is at least 18 years of age, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least 20 hours per week and at least 20 weeks each year of employment.
Eligible Retiree	<p>A retiree who has accepted a retirement allowance from the public employees retirement system, highway patrolmen's retirement system, the Teachers' Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by Job Service of North Dakota under section 52-11-01, the judges' retirement system established under Chapter 27-17, or the teachers' fund for retirement will be allowed to elect to participate in the group upon initial offering of the program and will be allowed to maintain their participation in the program only if they are continuously covered under the respective program.</p> <p>A surviving spouse must be:</p> <ol style="list-style-type: none"> 1. Receiving a beneficiary benefit from the aforementioned retirement plans, or 2. On the Dental Plan as a covered dependent at the time of member's death and there is no lapse in coverage. <p>A non-spouse beneficiary is not eligible to continue on the group Dental Plan.</p> <p>If an eligible retiree or surviving spouse does not enroll when initially offered, they may enroll within 31 days of any one of the following qualifying events:</p> <ul style="list-style-type: none"> • Date of retirement, which is the last day of employment or date of first retirement check. • Retiree's 65th birthday or eligibility for Medicare. • Retiree's spouse's 65th birthday or eligibility for Medicare. • Loss of coverage in another employer sponsored plan, or due to death, divorce, or completion of a COBRA continuation period. • Marriage • Birth, adoption, or legal guardianship. <p>If they do not enroll within 31 days of a qualifying event, they will have forfeited the right to enroll in the future.</p>
Eligible Spouse	The participant's spouse under a legally existing marriage between persons of the opposite sex.
Eligible Child	<ul style="list-style-type: none"> • Unmarried children under the age of 26 years who are financially dependent on the participant or the participant's spouse. • Children beyond the age of 26 who are full-time students at accredited institutions who are financially dependent on the participant or the participant's spouse. <p>The term "child" or "children" includes: children placed for adoption; children for whom the employee or spouse is guardian; grandchildren whose parent is an eligible dependent; children over 26 who are mentally or physically incapacitated.</p>

Military Personnel	<p>THIS IS NDPERS' CURRENT POILCY; HOWEVER THE PROPOSING CARRIERS MAY APPLY THEIR OWN CRITERIA WITH REGARD TO USERRA REQUIREMENTS.</p> <p>The employee may continue the dental coverage for up to 12 months or they may cancel coverage during the leave. If the leave exceeds 12 months, the employee may apply for COBRA continuation for up to 24 months. If they cancel their coverage, and return within 12 months, they may reapply for coverage within 31 days from the date of release from active duty or return to active employment. A copy of the discharge papers must accompany the application. Coverage will be reinstated and they will receive credit for all waiting periods met or accrued up to the time of the leave. If they do not enroll within this period, the 36-month re-enrollment restriction period will apply.</p>
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Dental Plan Effective Date: Coverage is effective on the 1st day of the month after the date the employee starts continuous service with employer.

Exception: If the employee was previously covered by the Dental Plan and then dropped coverage or had coverage cancelled and is no re-enrolling in the Dental Plan, the employee must complete the Re-Enrollment Restriction Period (3 years).

f) Long Term Care Plan: Eligibility and Effective Date

LTC Plan Eligibility

Eligible Employee	<p>To be eligible, an employee must be:</p> <ul style="list-style-type: none"> • At least 18 years of age, • Work at least 20 hours per week for 20 or more per calendar year, and • Be filling positions which are regularly funded and not of limited duration (e.g., permanent).
Eligible Retiree	<p>Same as dental plan eligibility. A retiree under age 85 is eligible for the plan.</p>
Eligible Family Members	Spouse: Same as dental plan eligibility.
	Children: Same as dental plan eligibility.
Others	Not eligible

Long Term Care Plan - Effective Date: An employee and/or spouse may enroll in the plan at any time. Coverage is effective on the 1st day of the month following application approval.

SECTION THREE SCOPE OF WORK

3.01

Scope of Work

Refer to RFP – Section II – Plans, Questions, Costs for a description of the voluntary dental and long term care coverages being requested by NDPERS.

3.02

Required Licenses

At the time specified by the deadline for submission of proposals, the offeror must have and keep current any professional licenses and permits required by federal, state, and local laws for performance of this contract. Offerors that do not possess required licenses at the time proposals are due will be determined non-responsive.

At a minimum, the offeror must be licensed in the State of North Dakota for the coverage(s) proposed.

3.03

Contract Schedule

This schedule of events represents NDPERS' best estimate of the contract schedule that will be followed. If a component of this schedule, such as the award date, is delayed, the rest of the schedule may be shifted by the same number of days.

The contract with the NDPERS will be effective January 1, 2007. In its response to this RFP, the offeror must include a detailed implementation plan. This plan must include employee communication materials and requirements along with the resources the offeror will commit to plan implementation and ongoing operation.

SECTION FOUR GENERAL CONTRACT INFORMATION

4.01

Contract Term, Extension and Renewal Options

The North Dakota Public Employees Retirement System is governed by North Dakota State statutes, which includes a requirement to solicit bids for group voluntary dental and long term care coverage for a specified term for a fully insured arrangement. NDPERS has determined that the specified term for providing such voluntary dental and long term care benefits under a fully insured arrangement shall be six (6) years, subject to renewals every one (1) or two (2) years, depending upon rate guarantee.

NDPERS would prefer an initial 24-month guaranteed rate. Subsequent renewals must be guaranteed for at least twelve (12) months.

NDPERS and the successful proposer will renegotiate the existing contract during the interim of each biennium without resorting to a formal bidding process. If NDPERS and the successful proposer are unable to reach an agreement during renegotiations, a formal bidding process will be initiated. NDPERS also reserves the right to terminate any contract awarded pursuant to this bidding process within thirty (30) days notice.

4.02

Standard Contract Provisions

The successful offeror will be required to sign and submit the Personal Service Contract attached to this RFP (Attachment 1). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal.

Offerors are instructed to contact the procurement officer's designee (Gallagher Benefit Services) in writing by the deadline set for questions with any concerns regarding the contract provisions.

4.03

Additional Terms and Conditions

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

4.04

Supplemental Terms and Conditions

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's rights under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

4.05

Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the purchasing agency approves the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any administration fees and/or premiums for work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

4.06

Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

4.07

Indemnification and Insurance Requirements

Offerors must review the attached Personal Service Contract (Attachment 1) for indemnification and insurance requirements. The indemnification and insurance provisions will be incorporated into the final contract.

Upon receipt of the Notice of Intent to Award, the successful offeror must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval.

4.08

Taxes and Taxpayer Identification

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at www.nd.gov/tax for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the State as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information.

4.09

Proposed Payment Procedures

The State will make payments based on a negotiated payment schedule.

4.10

Payment Terms

No payment will be made until NDPERS approves the contract.

4.11

Right to Inspect Place of Business

At reasonable times, the State may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the State makes an inspection, the contractor must provide reasonable assistance.

4.12

Inspection & Modification - Reimbursement for Unacceptable Deliverables

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent, the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

4.13

Termination for Default

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

4.14

Open Records Laws - Confidentiality

Any records that are obtained or generated by the contractor under this contract are subject to (1) the North Dakota open records law regarding public records and handling of confidential information, (2) the confidentiality requirements of North Dakota Century Code section 54-52.1-11 and the ownership and confidentiality provisions of North Dakota Century Code section 54-52.1-12, and (3) the HIPAA privacy rule and any business associate agreement between NDPERS and the Contractor regarding the NDPERS Dental Plan.

4.15

Work Product, Equipment, and Material

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract, unless otherwise agreed in writing by NDPERS.

4.16

Independent Entity

The contractor is an independent entity under this contract and is not a State employee for any purpose. The contractor retains sole and absolute discretion in the manner and means of carrying out the contractor's activities and responsibilities under the contract, except to the extent specified in the contract.

4.17

Assignment

Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the contractor may enter into subcontracts provided that the subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments.

4.18

Disputes - Applicable Law and Venue

Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

SECTION FIVE EVALUATION CRITERIA AND CONTRACTOR SELECTION

5.01

Evaluation Criteria

In determining which bid, if any, will best serve the interests of eligible employees and the State, the board shall give adequate consideration to the following factors:

1. The economy to be effected. (5 points)
2. The ease of administration. (5 points)
3. The adequacy of the coverages. (40 points)
4. The financial position of the carrier, with special emphasis as to its solvency. (10 points)
5. The reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services. (10 points)
6. Cost. (30 points)

5.02

Oral Presentations

After any discussions for clarifications and the initial evaluation of proposals received, offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to make an oral presentation. The presentations will be held:

DATE:	Late August 2006
PLACE:	NDPERS
FLOOR, ROOM:	To be decided
STREET ADDRESS:	To be decided
CITY, STATE:	Bismarck, ND

Offerors will be responsible for all costs associated with the providing the demonstration.

5.03

NDPERS Board Evaluation

In evaluating the proposals, price will not be the sole factor. The NDPERS Board may consider any factors it deems necessary and proper, including but not limited to: price, quality of service, response to this request, experience, staffing, NDPERS staff evaluation, GBS evaluation and general reputation of the carrier.

SECTION SIX STANDARD PROPOSAL INFORMATION

6.01

Authorized Signature

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

6.02

State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

6.03

Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

6.04

Offeror's Certification

By signature on the proposal, an offeror certifies that it complies with:

- d) the laws of the State of North Dakota;
- e) North Dakota Administrative Code;
- f) all applicable local, state, and federal laws, code, and regulations;
- g) the applicable portion of the Federal Civil Rights Act of 1964;
- h) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- i) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- j) all terms, conditions, and requirements set forth in this RFP;
- k) a condition that the proposal submitted was independently arrived at, without collusion;
- l) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- m) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

6.05

Offer Held firm

Proposals must remain open and valid for at least **120 DAYS** from the deadline specified for submission of proposals. In the event award is not made within **120 DAYS**, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

6.06

Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

6.07

Alternate Proposals

Offerors may submit more than one proposal for evaluation.

6.08

Subcontractors

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the offeror must provide, at the State's request,:

- (a) complete name of the subcontractor;
- (b) complete address of the subcontractor;
- (c) type of work the subcontractor will be performing;
- (d) percentage of work the subcontractor will be providing;
- (e) evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- (f) a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the State's procurement officer or project manager designated by the State.

6.09

Joint Ventures

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

6.10

Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information:

<http://www.ag.nd.gov/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, NDPERS, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

6.11

Evaluation of Proposals

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The evaluation will be based primarily on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections. The initial evaluation will be done by the Gallagher Benefit Services. GBS will report their findings to the NDPERS evaluation committee. The NDPERS committee will forward the GBS report and their findings and conclusions to the NDPERS Board. The NDPERS Board will review the evaluations and determine if interviews should be conducted and with which firms. The NDPERS Board will make the final decision on which offerer, if any, should be retained.

In evaluating the proposals, price will not be the sole factor. The NDPERS Board may consider any factors it deems necessary and proper, including but not limited to: price, quality of service, response to this request, experience, staffing, NDPERS staff evaluation, GBS evaluation and general reputation of the carrier.

6.12

Right of Rejection

NDPERS reserves the right to reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

NDPERS may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

NDPERS reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. NDPERS also reserves the right to refrain from making an award if it determines it to be in its best interest.

6.13

Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or NDPERS are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

6.14

Discussions and Best and Final Offers

NDPERS may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. NDPERS is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the Executive Director of NDPERS prior to the date set for discussions so that reasonable accommodation can be made.

6.15

Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website:

http://egov.oregon.gov/DAS/PFSS/SPO/reciprocal_detail.shtml or contact the North Dakota State Procurement Office at 701-328-2683.

6.16

Contract Negotiation

After final evaluation, NDPERS may negotiate with the offeror of the preferred proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If that offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, NDPERS may terminate negotiations and negotiate with the offeror of the next proposal selected by the NDPERS board..

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

6.17

Failure to Negotiate

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and NDPERS, after a good faith effort, cannot come to terms,

NDPERS may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

**SECTION SEVEN
ATTACHMENTS**

**7.01
Attachments**

Attachment 1 Personal Service Contract

ATTACHMENT 1

PERSONAL SERVICE CONTRACT

PERSONAL SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its [agency name] (STATE) and [contractor's legal name] (CONTRACTOR);

1. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

[State what is to be done under the contract. This may be a brief statement, or may require an attachment setting out the scope of services in great detail.]

2. TERM OF CONTRACT

The term of this contract is for a period of _____ months, commencing on the ____ day of _____, 20____, and terminating on the ____ day of _____, 20____.

3. COMPENSATION

STATE will pay for the services provided by CONTRACTOR under this contract an amount not to exceed _____ per _____, to be paid _____.

4. TERMINATION OF CONTRACT

a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.

i. **Termination for lack of funding or authority.** STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

(1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.

(2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or

appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

- (3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- b. **Termination for cause.** STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:
 - i. If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
 - ii. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.
 - iii. The rights and remedies of STATE provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5. FORCE MAJEURE

CONTRACTOR will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to STATE immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

6. RENEWAL

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

7. MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

8. SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

9. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no the authority to contract for or incur obligations on behalf of STATE.

10. NOTICE

All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

_____	or	_____
_____		_____
_____		_____

Notice provided under this provision does not meet the notice requirements at N.D.C.C. § 33-12.2-04(1).

11. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

12. SPOLIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR agrees to promptly notify STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

13. INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the Contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

14. INSURANCE

- a. CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
 - i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - ii. Automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - iii. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 - iv. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- b. The insurance coverages listed above must meet the following additional requirements:
 - i. Any deductible or self insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR. The amount of any deductible or self retention is subject to approval by State.
 - ii. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies shall be in form and terms approved by State.

- iii. State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify State under this agreement must not be limited by the insurance required in this agreement.
- iv. The State of North Dakota and its agencies, officers, and employees (State) must be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State must have all the rights and coverages as CONTRACTOR under the policies.
- v. The insurance required in this agreement, through a policy or endorsement, shall include:
 - (1) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against State;
 - (2) a provision that the policy and endorsements may not be canceled or modified without 30-days prior written notice to the undersigned State representative;
 - (3) a provision that any attorney who represents State under this policy must first qualify as, and be appointed by, the North Dakota Attorney General as a special assistant attorney general as required under N.D.C.C. § 54-12-08;
 - (4) a provision that CONTRACTOR's insurance coverage will be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by State must be in excess of CONTRACTOR's insurance and must not contribute with it;
 - (5) cross liability/severability of interest for all policies and endorsements;
- vi. The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.
- vii. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.
- viii. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

15. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due of any kind under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

17. CONFIDENTIALITY

CONTRACTOR agrees not to use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

18. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in Section 17, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 17 may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

19. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to STATE and must be delivered to STATE at STATE'S request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section.

20. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a STATE

employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this contract, except to the extent specified in this contract.

21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

22. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

23. REPAYMENT

STATE will not make any advance payments before performance by CONTRACTOR under this contract.

24. TAXPAYER ID

CONTRACTOR'S federal employer ID number is: _____.

25. PAYMENT OF TAXES BY STATE.

State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

26. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

CONTRACTOR

BY:_____

ITS:_____

DATE:_____

STATE OF NORTH DAKOTA

BY:_____

ITS:_____

DATE:_____